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October 13, 2006

PATENT APPLICATION
Attorney's Docket No.: 1159 1004-006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicants: Steven A. Bogen and Herbert H. Loeffler

Application No.: 10/823,368

Group: 1743

Filed: April 12, 2004

Examiner: L. Alexander

Confirmation No.: 4846

For: SLIDE STAINER WITH HEATING

CERTIFICATE OF MAILING OR TRANSMISSION

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10/13/06 Christopher J. Alexander
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Christopher J. Alexander
Typed or printed name of person signing certificate

STATEMENT OF THE SUBSTANCE OF INTERVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant thanks Examiner Alexander for the helpful interview with Dr. Steven Bogen and the undersigned.

At the interview, it was noted that parent patent 6,180,061, and patent 6,183,693 of another parent family, had been upheld in litigation and that a reexamination of each patent had resulted in confirmation of patentability of all claims of the two patents without amendment.

Dr. Bogen pointed out that the claimed invention relates to instruments that allow for random access capability in automated processing of microscope slides with reagent. The claimed assembly was distinct in its ability to control temperature of the slides with plural heated surface areas, each heated by an electric heater thereunder. The heated surface areas underlie the microscope slides. Plural temperature sensors are also provided on the platform for sensing the respective heated surface areas. With the exception of Rogers et al., the primary references do not suggest heating of slides with underlying electric heaters. In the embodiment with underlying

-2-

heaters in Rogers et al. (Figures 7, 8), the liquid dispenser and platform are taught to be in a fixed, non-moving relationship, as contrasted to the relative movement claimed in this application. This difference precludes the kind of random access instrument capability described in this application. It was submitted that Potter was of non-analogous art in that it does not relate to slide processing. Rather it processes liquid samples that must be retained in sealed chambers

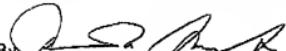
As discussed in the last response, there is also no motivation to combine Potter with any of the primary references.

In fact, one in the art of slide stainers, as of the priority date of this application, would have no reason to consider plural heated surface areas, each having an underlying heater, in a random access dispensing system. In that regard, Dr. Bogen discussed the three categories of non-routine staining. Special, histochemical stains were processed by hand and were considered to be inappropriate for automated processing due to unique requirements. IHC stains require no heating or are heated to a uniform body temperature where convective heating is appropriate. ISH stains are heated to high temperatures and, thus, must be sealed in closed chambers to prevent evaporation; accordingly, they are inappropriate for random access processing where reagents are dropped onto an underlying microscope slide that must necessarily be open to receive the reagent.

If the Examiner feels that a telephone conference would expedite prosecution of this case, the he is invited to call the undersigned.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

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